

EXHIBIT 1

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

* * * * *

THE CITY OF HUNTINGTON,

Plaintiff,

vs.

CIVIL ACTION

NO. 3:17-01362

AMERISOURCEBERGEN DRUG
CORPORATION, et al.,
Defendants.

CABELL COUNTY COMMISSION,
Plaintiff,

vs.

CIVIL ACTION

NO. 3:17-01665

AMERISOURCEBERGEN DRUG
CORPORATION, et al.,
Defendants.

* * * * *

Videotaped and Zoom video conference
deposition of JAMES RAFALSKI taken by the Defendants
under the Federal Rules of Civil Procedure in the
above-entitled action, pursuant to notice, before
Jennifer Vail-Kirkbride, a Registered Merit
Reporter, on the 11th day of September, 2020.

APPEARANCES:

APPEARING FOR THE PLAINTIFFS:

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8 ALSO PRESENT:

9 Gregory Diefenbaugh, Legal Video Specialist
10 (via Zoom)
11 Renee Cook, Esquire (via Zoom)
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9-11-2020

Deponent:

James E. Rafalski

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1 P R O C E E D I N G S

2 (9-11-2020, 9:00 A.M., this is the
3 video deposition of James Rafalski via Zoom.)

4 THE VIDEOGRAPHER: Good morning. We
5 are going on the record at 9:16 A.M. on September
6 11th, 2020. This is media unit number 1 of the
7 video recorded deposition of James Rafalski taken by
8 counsel for the defendant in the matter of City of
9 Huntington versus AmerisourceBergen Drug
10 Corporation, et al., filed in the U.S. District
11 Court for the Southern District of West Virginia,
12 case number 3:17-01362. This deposition is being
13 held remotely by videoconference.

14 My name is Greg Diefenbaugh from the
15 firm Veritext Legal Solutions and I am the certified
16 legal video specialist. The court reporter is
17 Jennifer Kirkbride from the firm Veritext Legal
18 Solutions.

19 I am not related to any party in this
20 action, nor am I financially interested in the
21 outcome. Counsel and all present and everyone
22 attending remotely will now state their appearances
23 and affiliations for the record. If there are any
24 objections to the proceeding, please state them at

1 the time of your appearance beginning with the
2 noticing attorney.

3 MR. FULLER: Mike Fuller on behalf of
4 the plaintiff.

5 MR. SCHMIDT: Paul Schmidt on behalf
6 of McKesson, along with my colleagues Chris Eppich
7 and Megan Monaghan.

8 MR. MAHADY: Joseph Mahady on behalf
9 of AmerisourceBergen Drug Corporation, along with my
10 colleague, Abigail Pierce.

11 (The court reporter requested
12 clarification)

13 MS. KNIGHT: Kathleen Knight, A.J.
14 Elkins and Amy Quezon for the plaintiffs.

15 MS. SALGADO: Suzanne Salgado on
16 behalf of Cardinal Health along with my colleague,
17 Jennifer Wicht.

18 MR. FRANKS: I am Ray Franks, also on
19 behalf of Cardinal Health, local counsel in
20 Charleston, West Virginia.

21 MR. SCHMIDT: I'm sorry, who was that?

22 MR. FRANKS: It's Ray Franks. I am in
23 Charleston, West Virginia, with Carey Douglas
24 Kessler & Ruby, local counsel in this matter for

1 Cardinal Health.

2 MR. SCHMIDT: Sorry. Thank you.

3 THE VIDEOGRAPHER: Would our court
4 reporter please swear in the witness.

5 JAMES E. RAFALSKI,
6 being first duly sworn, was examined and deposed as
7 follows:

8 THE VIDEOGRAPHER: Counsel may
9 proceed.

10 EXAMINATION

11 BY MR. SCHMIDT:

12 Q. Thank you. And thank you, Mr. Rafalski.
13 Let's go ahead and mark your report as Exhibit A,
14 please, your West Virginia report. And do you have
15 a copy of that with you? It would be in the box at
16 tab 1.

17 And then let's also go ahead -- I'm
18 sorry, let's mark that as Exhibit 1. And then let's
19 mark as Exhibit 2 the supplemental reliance letter
20 that we received, which should be tab 2 in your box.

21 (Deposition Exhibits 1 and 2 were
22 marked.)

23 A. It's in here. No, it's not. Okay.

24 Q. And let me ask you, am I correct that

1 the due diligence assumption?

2 A. No, sir.

3 Q. Okay. And the difference between A and B
4 is that A includes the due diligence assumption and
5 B does not; correct?

6 A. That's correct.

7 Q. And so in that regard, B is closer to
8 Masters and the real world than A; correct?

9 A. I don't know that it's closer. It's
10 different and why I say that is because B removes
11 any consideration whether due diligence is even
12 done. And that would be way outside the scope of
13 Masters, too, so when you're drawing those
14 comparisons, as far as the triggering, I'll go back,
15 they're exactly the same.

16 MR. SCHMIDT: Move to strike as
17 totally nonresponsive.

18 Q. Sir, A and B are the same except A has a
19 due diligence assumption and B does not; correct?

20 A. That's correct.

21 Q. The due diligence assumption in A was not
22 used in the Masters program in the real world;
23 correct?

24 A. That's correct.

DEPOSITION REVIEW
CERTIFICATION OF WITNESS

ASSIGNMENT REFERENCE NO: 4241593

City Of Huntington v. Amerisourcebergen Drug Corp, Et Al.

DATE OF DEPOSITION: 9/11/2020

WITNESS' NAME: James Rafalski

In accordance with the Rules of Civil Procedure, I have read the entire transcript of my testimony or it has been read to me.

I have listed my changes on the attached Errata Sheet, listing page and line numbers as well as the reason(s) for the change(s).

I request that these changes be entered as part of the record of my testimony.

I have executed the Errata Sheet, as well as this Certificate, and request and authorize that both be appended to the transcript of my testimony and be incorporated therein.

October 16, 2020

Date

James Rafalski

Sworn to and subscribed before me, a Notary Public in and for the State and County, the referenced witness did personally appear and acknowledge that:

They have read the transcript;
They have listed all of their corrections in the appended Errata Sheet;
They signed the foregoing Sworn Statement; and
Their execution of this Statement is of their free act and deed.

I have affixed my name and official seal this 16th day of October, 2020.

Notary Public

10/3/21

Commission Expiration Date

KENNETH A TROY
NOTARY PUBLIC - STATE OF MICHIGAN
COUNTY OF LIVINGSTON
My Commission Expires October 3, 2021

ERRATA SHEET

VERITEXT LEGAL SOLUTIONS MIDWEST

ASSIGNMENT NO: 4241593

PAGE/LINE(S) / CHANGE / REASON

41:19/"No." to "No, I was not asked to provide opinions
about the pharmacies' conduct."/correction

49:10/"northern" and "northeastern" to "western"/correction

62:18-19 / statement should be attributed to Mr. Rafalski,
not Mr. Fuller / correction

88:11/"them not a suspicious" to "them a suspicious"/correction

101:13/"No." to "No, I can't tell what realistically should
have been reported because the due diligence conducted by
the defendants was insufficient. Because of this failure on
their part, defendants would have no option but to report
every flagged order."/correction and clarification

104:8/"know" to "no"/correction

105:11/"One initial order." to "One initial order per
pharmacy."/correction

391:15/"main effect" to "maintenance"/correction

399:5/"lagging" to "flagging"/correction

October 16, 2020

Date

James Rafalski

SUBSCRIBED AND SWORN TO BEFORE ME THIS 16thDAY OF October, 2020.

Notary Public

KENNETH A TROY
NOTARY PUBLIC - STATE OF MICHIGAN
COUNTY OF LIVINGSTON
My Commission Expires October 3, 2021

10/3/21
Commission Expiration Date